THE
NORTH CAROLINA
GENERAL STATUTES

AND THE
EQUAL RIGHTS
AMENDMENT

UPDATE AND SUPPLEMENTARY STATUTES

MARCH, 1976

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"THE NORTH CAROLINA GENERAL STATUTES AND THE EQUAL RIGHTS AMENDMENT"

Update and Supplementary Statutes - March 22, 1976

The collection of statutes published by the Legislative Services Office in January, 1975, requires this addendum for two reasons: the 1975 General Assembly repealed or amended several statutes contained in the publication, and additional statutes have been identified which ought to be included in this collection.

1. Please note that the following statutes were repealed by the 1975 General Assembly:

G.S.	14-24	14-185	14-319	134-15
	14-25	14-187	72-39	
	14-48	14-198	99-4	
	14-180	14-262	134-2	

Also, G.S. 143-423 to 143-428 were repealed in 1975, and new provisions on the subject are contained in G.S. 143B-393 and 143B-394. (See Supplementary Statutes)

Also, G.S. 134-2 and 134-15 were repealed (as part of a bill that repealed all of G.S. Chapter 134 entitled "Youth Development" and rewrote this law in new G.S. Chapter 134A entitled "Youth Services").

Also, G.S. Chapter 127 entitled "Militia" was completely rewritten as Chapter 127A, and it has not been examined in time for this update.

2. Please note that the following statutes were amended during 1975 without affecting any of their language pertinent to this study:

G.S.	20-187.2	30-17	50-13.4
	28A-13-3	48-2	95-17
	29-19	50-5(6)	105-149

3. The "Supplementary Statutes" list includes several laws that were not pointed out by the original publication as well as a few statutes already identified whose potentially sex discriminatory language was altered during 1975.

4. This collection of statutes has several limitations which should be explained to the reader. First, the researchers attempted to "scan" the North Carolina General Statutes for laws that might be regarded as establishing sex discrimination after passage of the Equal Rights Amendment. A conscious effort was made to avoid using personal judgment to decide whether any specific law in fact would create discrimination; therefore, this list tends to be overinclusive. No editorial comments accompany the statutes for the same reason.

In addition, the statutes identified here have been taken out of their respective G.S. Chapters and isolated side-by-side for easy reference. In order to scrutinize them for possible discrimination, it is advisable to read them in conjunction with the surrounding statutes and the overall purpose of the specific G.S. Chapter in which they appear. Note also that in several instances, the entire statute does not appear - only discriminatory language.

It is important to recognize that this publication only deals with statutory law. Much of our State law is based on "common law" and judicial or case law. This document has not considered those sources.

The Legislative Research Commission is conducting a study on sex discrimination in North Carolina and will report its findings to the 1977 General Assembly. This study committee is examining all of the State's laws to identify problems of sex discrimination and recommend changes.

Finally, it is hoped that this publication may serve as one of the reference points from which to launch thoughtful study into the subject of sex discrimination in North Carolina law; the publication is not a substitute for thorough research.

Durward Gunnells
Legislative Services Office

SUPPLEMENTARY STATUTES

to

"The North Carolina General Statutes and the Equal Rights Amendment"

§ 48-6. When consent of father not necessary. — (a) In case of a child born out of wedlock when the paternity of said child has not been judicially established or acknowledged by affidavit, or when said child has not been legitimated prior to the time of the signing of the consent, the written consent of the mother alone shall be sufficient under this Chapter and the father need not be made a party to the proceeding. The judicial establishment of paternity, the acknowledgement of paternity by affidavit, or the legitimation of the child by any means subsequent to the signing of such consent of the mother shall not make such consent invalid nor adversely affect the sufficiency of such consent nor make necessary the consent of the father or his joinder as a party to the proceeding. The judicial establishment of paternity or the acknowledgment of paternity by affidavit prior to the signing of the consent by the mother, if such consent was signed prior to January 1, 1976, shall not make necessary the consent of the father or his joinder as a party to the proceeding.
(1969, c. 534, s. 1; 1975, c. 714.)

§ 50-5. Grounds for absolute divorce.—Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony, on application of the party injured, made as by law provided, in the following cases:

(3) If the wife at the time of the marriage is pregnant, and the husband is ignorant of the fact of such pregnancy and is not the father of the child with which the wife was pregnant at the time of the marriage.

(6) In all cases where a husband and wife have lived separate and apart for three consecutive years, without cohabitation, and are still so living separate and apart by reason of the incurable insanity of one of them, the court may grant a decree of absolute divorce upon the petition of the sane spouse: . . .

[language omitted]

In all decrees granted under this subdivision in actions in which the husband is the plaintiff the court shall require him to provide for the care and maintenance of the insane defendant as long as she may live, compatible with his financial standing and ability, and the trial court will retain jurisdiction of the parties and the cause, from term to term, for the purpose of making such orders as equity may require to enforce the provisions of the decree requiring the plaintiff to furnish the necessary funds for such care and maintenance. In the event of feme defendant's continued confinement in an institution for the mentally disordered, it shall be deemed sufficient support and maintenance if the plaintiff continue to pay and discharge the monthly payments required of him by the institution, such payments to be in amounts equal to those required of patients similarly situated. In all such actions wherein the wife is the plaintiff and the insane defendant has insufficient income and property to provide for his care and maintenance, then in the discretion of the court, the court may require her to provide for the care and maintenance of the insane defendant as long as he may live, compatible with her financial standing and ability, and the trial court will retain jurisdiction of the parties and the cause, from term to term, for the purpose of making such orders as equity may require to enforce the provisions of the decree requiring plaintiff to furnish the necessary funds for such care and maintenance.

Service of process shall be held upon the regular guardian for said defendant spouse, if any, and if no regular guardian, upon a duly appointed guardian ad litem and also upon the superintendent or physician in charge of the institution wherein the insane spouse is confined. Such guardian or guardian ad litem shall make an investigation of the circumstances and notify the next of kin of the insane spouse or the superintendent of the institution of the action and whenever practical confer with said next of kin before filing appropriate pleadings in behalf of the defendant.

In all actions brought under this subdivision, if the jury finds as a fact that the plaintiff has been guilty of such conduct as has conduced to the unsoundness of mind of the insane defendant, the relief prayed for shall be denied.

The plaintiff or defendant must have resided in this State for six months next preceding institution of any action under this section.

(1967, c. 1152, s. 8; 1971, c. 1173, ss. 1, 2; 1975, c. 771.)

§ 50-6. Divorce after separation of one year on application of either party.—Marriages may be dissolved and the parties thereto divorced from the bonds of matrimony on the application of either party, if and when the husband and wife have lived separate and apart for one year, and the plaintiff or defendant in the suit for divorce has resided in the State for a period of six months. This section shall be in addition to other acts and not construed as repealing other laws on the subject of divorce. (1931, c. 72; 1933, c. 163; 1937, c. 100, ss. 1, 2; 1943, c. 448, s. 3; 1949, c. 264, s. 3; 1965, c. 636, s. 2.)

§ 50-11. Effects of absolute divorce. — (a) After a judgment of divorce from the bonds of matrimony, all rights arising out of the marriage shall cease and determine except as hereinafter set out, and either party may marry again without restriction arising from the dissolved marriage.

(b) No judgment of divorce shall render illegitimate any child in esse, or begotten of the body of the wife during coverture.

(c) Except in case of divorce obtained with personal service on the defendant spouse, either within or without the State, upon the grounds of the adultery of the dependent spouse and except in case of divorce obtained by the dependent spouse in an action initiated by such spouse on the ground of separation for the statutory period a decree of absolute divorce shall not impair or destroy the right of a spouse to receive alimony and other rights provided for such spouse under any judgment or decree of a court rendered before or at the time of the rendering of the judgment for absolute divorce.

(d) A divorce obtained outside the State in an action in which jurisdiction over the person of the dependent spouse was not obtained shall not impair or destroy the right of the dependent spouse to alimony as provided by the laws of this State. (1871-2, c. 193, s. 43; Code, s. 1295; Rev., s. 1569; 1919, c. 204; C. S., s. 1663; 1953, c. 1313; 1955, c. 872, s. 1; 1967, c. 1152, s. 3.)

§ 50-13.2. Who entitled to custody; terms of custody; taking child out of State. — (a) An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will, in the opinion of the judge, best promote the interest and welfare of the child.

(b) An order for custody of a minor child may grant exclusive custody of such child to one person, agency, organization or institution, or, if clearly in the best interest of the child, provide for custody in two or more of the same, at such times and for such periods as will in the opinion of the judge best promote the interest and welfare of the child.

(c) An order for custody of a minor child may provide for such child to be taken outside of the State, but if the order contemplates the return of the child to this State, the judge may require the person, agency, organization or institution having custody out of this State to give bond or other security conditioned upon the return of the child to this State in accordance with the order of the court. (1957, c. 545; 1967, c. 1153, s. 2.)

§ 50-13.4. Action for support of minor child. — (a) Any parent, or any person, agency, organization or institution having custody of a minor child, or bringing an action or proceeding for the custody of such child, or a minor child by his guardian may institute an action for the support of such child as hereinafter provided.

(b) In the absence of pleading and proof that circumstances of the case otherwise warrant, the father, the mother, or any person, agency, organization or institution standing in loco parentis shall be liable, in that order, for the support of a minor child. Such other circumstances may include, but shall not be limited to, the relative ability of all the above-mentioned parties to provide support or the inability of one or more of them to provide support, and the needs and estate of the child. Upon proof of such circumstances the judge may enter an order requiring any one or more of the above-mentioned parties to provide for the support of the child, as may be appropriate in the particular case, and if appropriate the court may authorize the application of any separate estate of the child to his support.

(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, and other facts of the particular case.

(d) Payments for the support of a minor child shall be ordered to be paid to the person having custody of the child or any other proper person, agency, organization or institution, or to the court, for the benefit of such child.

(e) Payment for the support of a minor child shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property or any interest therein, or a security interest in real property, as the court may order. In every case in which payment for the support of a minor child is ordered and alimony or alimony pendente lite is also ordered, the order shall separately state and identify each allowance.

(f) Remedies for enforcement of support of minor children shall be available as herein provided.

§ 50-16.1. Definitions. — As used in the statutes relating to alimony and alimony pendente lite unless the context otherwise requires, the term:

(1) "Alimony" means payment for the support and maintenance of a spouse, either in lump sum or on a continuing basis, ordered in an action for divorce, whether absolute or from bed and board, or an action for alimony without divorce.

(2) "Alimony pendente lite" means alimony ordered to be paid pending the final judgment of divorce in an action for divorce, whether absolute or from bed and board, or in an action for annulment, or on the merits in an action for alimony without divorce.

(3) "Dependent spouse" means a spouse, whether husband or wife, who is actually substantially dependent upon the other spouse for his or her maintenance and support or is substantially in need of maintenance and support from the other spouse.

(4) "Supporting spouse" means a spouse, whether husband or wife, upon whom the other spouse is actually substantially dependent or from whom such other spouse is substantially in need of maintenance and support. A husband is deemed to be the supporting spouse unless he is incapable of supporting his wife. (1967, c. 1152, s. 2.)

§ 101-1. Legislature may regulate change by general but not private law.—The General Assembly shall not have power to pass any private law to alter the name of any person, but shall have power to pass general laws regulating the same. (Const., Art. II, s. 11; Rev., s. 2146; C. S., s. 2970.)

Cross References. — As to changing name of minor child upon adoption, see § 48-14. As to resumption of maiden name by a woman after divorce, see § 50-12. As to duty to disclose real name when trading as "company" or "agent," see § 66-72. As to trademarks, etc., see Chapter 80.

§ 101-2. Procedure for changing name; petition; notice.—A person who wishes, for good cause shown, to change his name must file his application before the clerk of the superior court of the county in which he lives, having first given 10 days' notice of the application by publication at the courthouse door.

Applications to change the name of minor children may be filed by their parent or parents or guardian or next friend of such minor children, and such applications may be joined in the application for a change of name filed by their parent or parents: Provided nothing herein shall be construed to permit one parent to make such application on behalf of a minor child without the consent of the other parent of such minor child if both parents be living, except that a minor who has reached the age of 16 years, upon proper application to the clerk may change his or her name, with the consent of the parent who has custody of the minor and has supported the minor, without the necessity of obtaining the consent of the other parent, when the clerk of court is satisfied that the other parent has abandoned the minor. Provided, further, that a change of parentage or the addition of information relating to parentage on the birth certificate of any person shall be made pursuant to G.S. 130-60.

Notwithstanding any other provisions of this section, the consent of a parent who has abandoned a minor child shall not be required if there is filed with the clerk a copy of an order of a court of competent jurisdiction adjudicating that such parent has abandoned such minor child. In the event that a court of competent jurisdiction has not therefore declared the minor child to be an abandoned child, then on written notice of not less than 10 days to the parent alleged to have abandoned the child, by registered or certified mail directed to such parent's last known address, the clerk of superior court is hereby authorized to determine whether an abandonment has taken place. If said parent denies that an abandonment has taken place, this issue of fact shall be determined as provided in G.S. 1-273, and if abandonment is determined, then the consent of said parent shall not be required. Upon final determination of this issue of fact the proceeding shall be transferred back to the special proceedings docket for further action by the clerk. (1891, c. 145; Rev., s. 2147; C. S., s. 2971; 1947, c. 115; 1953, c. 678; 1955, c. 951, s. 3; 1957, c. 1442; 1959, c. 1161, s. 7; 1971, c. 444, s. 1.)

Local Modification. — Chowan: 1945, c. 455; Mitchell: 1945, c. 389.

Editor's Note. — The 1971 amendment substituted "G.S. 130-60" for "G.S. 130-64.1" at the end of the last sentence in the second paragraph.

§ 101-3. Contents of petition.—The applicant shall state in the application his true name, county of birth, date of birth, the full name of parents as shown on birth certificate, the name he desires to adopt, his reasons for desiring such change, and whether his name has ever before been changed by law, and, if so, the facts with respect thereto. (1891, c. 145; Rev., s. 2147; C. S., s. 2972; 1945, c. 37, s. 1; 1957, c. 1233, s. 1.)

§ 101-4. Proof of good character to accompany petition.—The applicant shall also file with said petition proof of his good character, which proof must be made by at least two citizens of the county who know his standing: Provided, however, proof of good character shall not be required when the application is for the change of name of a child under 16 years of age. (1891, c. 145; Rev., s. 2148; C. S., s. 2973; 1963, c. 206.)

§ 101-5. Clerk to order change; certificate and record.—If the clerk thinks that good and sufficient reason exists for the change of name, it shall be his duty to issue an order changing the name of the applicant from his true name to the name sought to be adopted. Such order shall contain the true name, the county of birth, the date of birth, the full name of parents as shown on birth certificate, and the name sought to be adopted. He shall issue to the applicant a certificate under his hand and seal of office, stating the change made in the applicant's name, and shall also record said application and order on the docket of special proceedings in his court. He shall forward the order to the State Registrar of Vital Statistics on a form provided by him. If the applicant was born in North Carolina, the State Registrar shall note the change of name of the individual or individuals specified in the order on the birth certificate of that individual or those individuals and shall notify the register of deeds in the county of birth. If the applicant was born in another state of the United States, the State Registrar shall forward the notice of change of name to the registration office of the state of birth. (1891, c. 145; Rev., ss. 2149, 2150; C. S., s. 2974; 1955, c. 951, s. 4; 1957, c. 1233, s. 2; 1971, c. 444, s. 2.)

Editor's Note. — The 1971 amendment substituted "the order to the State Registrar of Vital Statistics on a form provided by him" for "a copy of the change of name order to the State Registrar of Vital Statistics if the applicant was born in North Carolina" in the fourth sentence, substituted "If the applicant was born in North Carolina" for "Upon receipt of the order" in the fifth sentence, and added the last sentence.

§ 101-6. Effect of change; only one change.—When the order is made and the applicant's name changed, he is entitled to all the privileges and protection under his new name as he would have been under the old name. No person shall be allowed to change his name under this Chapter but once, except that he shall be permitted to resume his former name upon compliance with the requirements and procedure set forth in this Chapter for change of name. (1891, c. 145; Rev., ss. 2147, 2149; C. S., s. 2975; 1945, c. 37, s. 2.)

§ 101-7. Recording name change.—When the name of any individual, corporation, partnership, or association has been changed in a manner provided by law, any attorney licensed to practice law in this State may file an affidavit with the clerk of superior court stating facts concerning the change of name. The clerk shall cause the affidavit to be filed and indexed among the records of his office, pursuant to G.S. 7A-180(3) and G.S. 7A-343(3). The clerk shall also forward a copy of the affidavit under the seal of his office to the clerk of superior court of any other county named in the affidavit where it shall also be filed and indexed in accordance with this section. Affidavits filed and indexed under this section are for informational purposes only and neither the affidavit nor the manner of its filing and indexing shall in any manner affect the rights or liabilities of any person. (1971, c. 592, s. 1.)

§ 116-6. Election and terms of members of Board of Governors. — (a) As the terms of members of the Board of Governors provided for in G.S. 116-5 expire, their successors shall be elected by the Senate and House of Representatives. Eight members shall be so elected at the regular legislative session in 1973 and every two years thereafter.

(b) All terms shall commence on July 1 of odd-numbered years and all members shall serve for eight-year overlapping terms.

(c) No member may be elected to more than two full terms in succession.

(d) The Senate and House of Representatives, in electing members of the Board of Governors, shall select from a slate of nominees made in a joint session of the General Assembly. There shall be nominated from the floor at least twice the number of persons as there are vacancies to be filled. The Senate and the House of Representatives shall elect one half of the persons necessary to fill the vacancies, with the Senate to hold its election prior to the House of Representatives. In the event that an odd number of members are to be elected, the House of Representatives shall select the additional nominee. In 1973 and every four years thereafter, the Senate shall elect at least one woman and one member of a minority race and the House of Representatives shall elect at least one member of the political party to which the largest minority of the members of the General Assembly belong. In 1975 and every four years thereafter, the Senate shall elect at least one member of the political party to which the largest minority of the members of the General Assembly belong and the House of Representatives shall elect at least one woman and one member of a minority race.

(e) Of the eight members elected every two years, at least one shall be a woman, at least one other member shall be a member of a minority race, and at least one other member shall be a member of the political party to which the largest minority of the members of the General Assembly belong. In subsequent elections to the Board, the General Assembly shall maintain at least these minimum proportions among the members of the Board. (1971, c. 1244, s. 1.)

§ 116-7. General provisions concerning members of the Board of Governors. — (a) All members of the Board of Governors shall be selected for their interest in, and their ability to contribute to the fulfillment of, the purposes of the Board of Governors, and all members shall be deemed members-at-large, charged with the responsibility of serving the best interests of the whole State. In electing members, the objective shall be to obtain the services of the best qualified citizens of the State, taking into consideration the need for representation on the Board by the different races, sexes and political parties.

§ 143B-393. Council on the Status of Women — creation; powers and duties. — There is hereby created the Council on the Status of Women of the Department of Administration. The Council on the Status of Women shall have the following functions and duties:

(1) To advise the Governor, the principal State departments, and the State legislature concerning the education and employment of women in the State of North Carolina; and

(2) To advise the Secretary of Administration upon any matter the Secretary may refer to it. (1975, c. 879, s. 37.)

§ 143B-394. Council on the Status of Women — members; selection; quorum; compensation. — The Council on the Status of Women of the Department of Administration shall consist of seven members appointed by the Governor. The initial members of the Council shall be the appointed members of the Commission on the Education and Employment of Women who shall serve for a period equal to the remainder of their current terms on the Commission on Education and Employment of Women, four of whose appointments expire June 30, 1976, and three of whose appointments expire June 30, 1977. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council to serve as chairman at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1975, c. 879, s. 38.)

§ 148-26. State policy on employment of prisoners. — (a) It is declared to be the public policy of this State to provide diversified employment for all able-bodied inmates of the State prison system in work for the public benefit that will reduce the cost of their keep while enabling them to acquire or retain skills and work habits needed to secure honest employment after their release.

In exercising his power to enter into contracts to supply inmate labor as provided by this section, the Secretary of Correction shall not assign any inmate to work under any such contract who is eligible for work release as provided in this Article, study release as provided by G.S. 148-4(4), or who is eligible for a program of vocational rehabilitation services through the State Vocational Rehabilitation Agency, unless suitable work release employment or educational opportunity cannot be found for the inmate, and the inmate is not eligible for a program of vocational rehabilitation services through the State Vocational Rehabilitation Agency, and shall not agree to supply inmate labor for any project or service unless it meets all of the following criteria:

(1) The project or service involves a type of work that inmates are qualified to do;

(2) The project or service is of benefit to the citizens of North Carolina or units of State or local government thereof;

(3) The project or service is not one that would normally be performed by private industry or noninmate labor if inmate labor were not available.

(4) Wages shall be paid in an amount not exceeding one dollar ($1.00) per day per inmate by the local or State contracting agency.

(b) As many minimum custody prisoners as are available and fit for road work, who cannot appropriately be placed on work release, study release, or other full-time programs, shall be employed in the maintenance and construction of public roads of the State as can be used for this purpose. The number and location of prisoners to be kept available for work on the public roads shall be agreed upon by the governing authorities of the Department of Transportation and the State Department of Correction far enough in advance of each budget to permit proper provisions to be made in the request for appropriations submitted by the Department of Transportation. Any dispute between the Departments will be resolved by the Governor. Prisoners so employed shall be compensated, at rates fixed by the Department of Correction's rules and regulations for work performed; provided, that no prisoner working on the public roads under the provisions of this section shall be paid more than one dollar ($1.00) per day from funds provided by the Department of Transportation to the Department of Correction for this purpose.

(c) The State Department of Correction may make such contracts with departments, institutions, agencies, and political subdivisions of the State for the hire of prisoners to perform other appropriate work as will help to make the prisons as nearly self-supporting as is consistent with the purposes of their creation. The Department of Correction may contract with any person or any group of persons for the hire of prisoners for forestry work, soil erosion control, water conservation, hurricane damage prevention, or any similar work certified by the Secretary of Natural and Economic Resources as beneficial in the conservation of the natural resources of this State. All contracts for the employment of prisoners shall provide that they shall be fed, clothed, quartered, guarded, and otherwise cared for by the Department of Correction.

(f) Adult inmates of the State prison system shall be prohibited from working at or being on the premises of any schools or institutions operated or administered by the State Division of Youth Development. (1933, c. 172, ss. 1, 14; 1957, c. 349, s. 5; 1967, c. 996, s. 13; 1971, c. 193; 1973, c. 1262, s. 86; 1975, c. 278; c. 506, ss. 1, 2; c. 682, s. 2; c. 716, s. 7.)

Constitution of North Carolina

Article X § 5 Insurance.— The husband may insure his own life for the sole use and benefit of his wife or children or both, and upon his death the proceeds from the insurance shall be paid to or for the benefit of the wife or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his estate. Any insurance policy reserves to the insured during his lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

See also G.S. 58-205